

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1486

To be argued by
BARRY BASSIS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

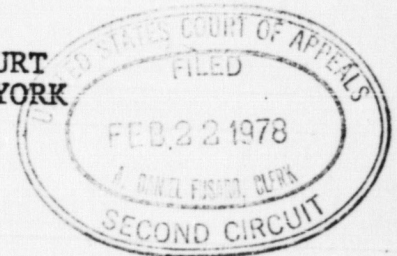
-----X
:
UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
VINICIO PARADIS, :
:
Defendant-Appellant. :
:
-----X

Bp/s

Docket No. 77-1486

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



MARTIN ERDMANN,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

BARRY BASSIS,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

208 1

CS43
0934

PARADIS, VINICIO

07 28

77

561

02

X District Office

(LAST, FIRST, MIDDLE)

JUVENILE

02

Vr

Docket No.

Det

TITLE SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

18:371
18:472Consp. to deal in counterfeit.
Possess. & sale of counterfeit money.1
4&5U.S. MAG
CASE NO 77-696

BAIL • RELEASE

☐ AMT ☐ Fugit
☐ Denied ☐ Set ☒ Port Bond
☒ PSA
 \$ 1,000
 Date 6-3-77
☐ Bail Not Made
☐ Status Changed (See Docket)
 conditions
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☒ 3rd
☐ Prty Cust Other

II. KEY DATES & INTERVALS

SUPERSEDING
COUNTS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began 6/2/77 Summons Served First Appearance 6/3/77	High Risk Date Information 7-28-77 Indict. Waived In Charging District	8-4-77 1st Plea 8-4-77 Final Plea	Trial Set For 10-13-77 Trial Began 11-01-77 Trial Ended 11-04-77	Disposition of Charges 11-04-77 12-07-77 On All Charges On Lesser Offense(s) WOP: WP On Government's Motion

MAGISTRATE

DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
6/3/77	NG-08AJ	6/3/77	NG-08AJ	DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
18 U.S.C. §472 POSS. OF COUNTERFEIT SECURITY				

U.S. Attorney or Asst.

ATTORNEYS

Set Name / Clerk X

Gregory L. Diskant
791-0036Edward Chase
LAS

270

-438

Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
6/3/77		Defendant presented, Legal Aid assigned (Chase). Deft. released on \$1,000 PRB with surrender of passport. Passport will be surrendered by 6/6/77.	
6-6-77		Deft. surrendered passport to Mag. Office and placed in safe.	
7-28-77		INDICTMENT FILED, 77 CR 561	
8-4-77		Deft. (atty. present) Pleads not guilty. Bail fixed at \$1,000.P.R.B. and supervision of P.T.S. cont'd. Case assigned to Judge MacMahon for all purposes. Goettel, J.	
10-7-77		DEFT (DID NOT APPEAR) AUSA Diskant Atty Edward Chase, present) PTC HELD AND CONCLUDED. Trial on Thurs. 10-13-77 at 10:30AM R. 905. CANNELLA, J	3-10-7-77 E-1
10-13-77		Filed proposed voir dire...	

CONTINUED ON PAGE NO. 2.

11-01-77 ORDERED SEALED and placed in Vault in the Clerks Office
 Casheir's Dept. to be unsealed by order of the Court.
 (COURT'S EXHIBIT U.S.DIST.COURT S.D. OF N.Y. Nov.1,1977)
 CANNELLA,J

11-01-77 TRIAL BEGUN BEFORE CANNELLA,J WITH A JURY.

11-02-77 TRIAL CONTINUED

11-03-77 TRIAL CONTINUED

11-04-77 TRIAL CONTINUED - AND CONCLUDED
 JURY VERDICT - DEFT NOT GUILTY on COUNT 1
 GUILTY on COUNTS 4 & 5.
 JURY POLLED.
 PSI Ordered. SENT. on: 12-7-77 at 10AM R.619 BAIL CONT'D.
 CANNELLA,J

12-07-77 Filed Judgment (Atty. Edward Chase, present(Federal Defender)
 thru Interpreter Richard Schoen - Imposition of sentence
 on each of counts 4 and 5 is suspended. Defendant
 is placed on probation for a period of TWO (2) YEARS,
 subject to the standing probation order of this court.
 CANNELLA,J
 Entered on: 12-07-77
 Issued Commitment and Copies.

12-9-77 Filed notice of appeal from judgment dated 12-7-77..Copy given
 to U.S.ATTY. and mailed to deft. 1307 Nelson Ave.Bronx,N.Y.
 10452 Apt. 3F..Leave to appeal in forma pauperis hereby Granted.
 Cannella,J.....

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JACINTO VASQUEZ and
VINICIO PARADIS,

Defendants

INDICTMENT

77 Cr. 561

COUNT ONE

The Grand Jury charges:

1. From on or about the 24th day of May, 1977, up to and including the 2nd day of June, 1977, in the Southern District of New York, JACINTO VASQUEZ and VINICIO PARADIS, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with one another to commit offenses against the United States, to wit, violations of Section 472 of Title 18, United States Code.

2. It was a part of said conspiracy that JACINTO VASQUEZ and VINICIO PARADIS, the defendants, unlawfully, wilfully and knowingly, and with intent to defraud, would sell and attempt to sell and would keep in their possession and conceal certain falsely made, forged, counterfeited and altered obligations and other securities of the United States, to wit, approximately 2800 counterfeit \$5 Federal Reserve Notes.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, JACINTO VASQUEZ and VINICIO PARADIS, the defendants, did commit the following overt acts, among others, in the Southern District of New York:

1. On or about May 31, 1977, JACINTO VASQUEZ, the defendant, had a conversation concerning the sale of \$14,000 in counterfeit \$5 Federal Reserve Notes.

2. On or about June 2, 1977, JACINTO VASQUEZ and VINICIO PARADIS, the defendants, went to the vicinity of White Plains Avenue and the Bruckner Expressway, Bronx, New York.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 27th day of May, 1977, in the Southern District of New York, JACINTO VASQUEZ, the defendant, unlawfully, wilfully and knowingly, and with intent to defraud, did sell and attempt to sell and did keep in his possession and conceal certain falsely made, forged, counterfeited and altered obligations and securities of the United States, to wit, approximately 100 counterfeit \$5 Federal Reserve Notes.

(Title 18, United States Code, Section 472.)

COUNT THREE

The Grand Jury further charges:

On or about the 31st day of May, 1977,
in the Southern District of New York, JACINTO
VASQUEZ, the defendant, unlawfully, wilfully and
knowingly, and with intent to defraud, did sell
and attempt to sell and did keep in his possession
and conceal certain falsely made, forged, counter-
feited and altered obligations and securities of
the United States, to wit, approximately 100
counterfeit \$5 Federal Reserve Notes.

(Title 18, United States Code, Section 472.)

COUNT FOUR

The Grand Jury further charges:

On or about the 2nd day of June, 1977,
in the Southern District of New York, VINICIO
PARADIS, the defendant, unlawfully, wilfully and
knowingly, and with intent to defraud, did keep
in his possession and conceal certain falsely made,
forged, counterfeited and altered obligations
and securities of the United States, to wit,
approximately 43 counterfeit \$5 Federal Reserve
Notes.

(Title 18, United States Code, Section 472.)

COUNT FIVE

The Grand Jury further charges:

On or about the 2nd day of June, 1977,
in the Southern District of New York, JACINTO
VASQUEZ and VINICIO PARADIS, the defendants,
unlawfully, wilfully and knowingly, and with
intent to defraud, did sell and attempt to sell
and did keep in their possession and conceal
certain falsely made, forged, counterfeited and
altered obligations and securities of the United
States, to wit, approximately 2800 counterfeit
\$5 Federal Reserve Notes.

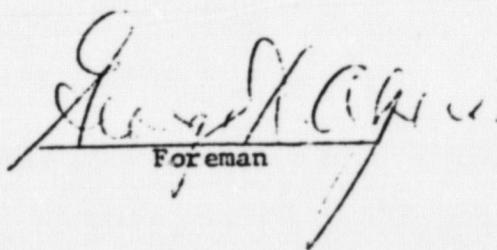
(Title 18, United States Code, Sections 2 and 472.)

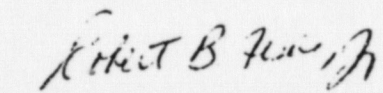
COUNT SIX

The Grand Jury further charges:

On or about the 2nd day of June, 1977,
in the Southern District of New York, JACINTO
VASQUEZ, the defendant, unlawfully, wilfully and
knowingly did carry a firearm, to wit, an "RG"
five-shot revolver, serial number 0063791, during
his commission of the offense charged in Count
Five of this Indictment, a felony prosecutable in
a court of the United States.

(Title 18, United States Code, Section 924(c)(2))


Foreman


ROBERT B. FISKE, JR.
United States Attorney

JUDGE CANNELLY 7 CRIM. 0561

Form No. USA-33a-274 (Ed. 9-25-58)
United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

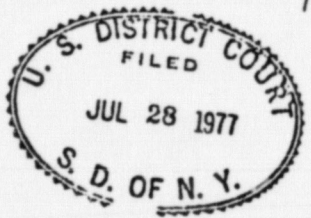
vs.
JACINTO VASQUEZ and
VINICIO PARADIS,
Defendants.

INDICTMENT
77 Cr.

(18, U.S.C. §§371, 472,
924(c)(2)).

ROBERT B. FISKE, JR.
United States Attorney.
A TRUE BILL

[Signature]
Foreman.



7/28/77 - Filed Indictment.

Haigh, J.
F.D. 77 Jacinto Vasquez
left (and interpreter, present) w/o atty
Referred to Mag for assignment of counsel
Court directs a W/D plan be set.
One assigned to Jacinto Vasquez
for all purposes. Bail continues
at \$2,000 P.R.B. sec. by \$200 Cash

Def. Vinicio Paradis (and atty Murray
Magel present) Enters a W/D plan
Bail continues at \$1,000 P.R.B. and
continue under Pre-Trial Supv. as to
both defendants. AB

AUSA DISKAUT *[Signature]*

OCT 7 - 1977

DEPT. VASQUEZ - (ATTY PRESENT) - JOHN C. ANIPA
W/D PLAN OF NG, AND PLEADS GUILTY TO
COUNT 5 ONLY - CTS 1-2-3 & 6 OPEN
PS I ORDERED - SENT. ON. 11-15-77 ATTORNEY
R 619 - BAIL CONT'D - CANNELLY, J.

OVER

AVSA DISKANT

NOV 1-1977

DEPT. PARADIS (DID NOT APPEAR) ATTY. PRESENT
EDWARD CHASE

PTC HELD AND CONCLUDED. TRIAL ON
THURS. 10-13-77 AT 10:30 AM R 905 -

Cannella, J.
2

NOV 1-1977 - TRIAL BEGUN BEFORE - CANNELLA J.
WITH A JURY AS TO DEPT. PARADIS ONLY. -

NOV 2-1977 - TRIAL CONTINUED -

NOV 3-1977 - TRIAL CONTINUED -

NOV 4-1977 - TRIAL CONTINUED - AND CONCLUDED.
JURY VERDICT - DEPT. NOT GUILTY ON COUNT 1
GUILTY ON COUNTS ~~2, 3, 4, 5~~
4 5
JURY POLLED.

d P.S.I. ORDERED. SENT ON 12-7-77 AT
10 AM R 6.9 - BAIL CONT'D CANNELLA J.

C

AVSA DISKANT

NOV 15 1977

THRU INTERPRETOR SAMUEL ALFONSO
DEPT. VASQUEZ - (ATTY. PRESENT)
JOHN CIAMPA

d SENTENCE TO TWO (2) YEARS ON COUNT 5, PURSUANT
TO T. 18, U.S. CODE, SEC. 4305(B).

DEPT. MOVES TO DISMISS COUNTS 1-2-3 & 6 -
GRANTED
NO OBJECTION BY GOVT.

REMANDER

CANNELLA J.

(RM)

AVSA DISKANT

DEC 7-1977

THRU INTERPRETOR RICHARD SCHEN
DEPT. MOVES TO DISMISS - DEPT. CHASE
DEPT. PARADIS - (ATTY. PRESENT)

d Imposition of sentence on DEPT. PARADIS ON COUNTS 4 AND 5
IS SUSPENDED. DEPT. PLACED ON PROB. FOR 3
MONTHS OF 2 YRS SUBJECT TO THE SENDING PROB. VIOL
OF THIS COURT. DEPT. ADVISED OF HIS RIGHT TO APPEAL
CANNELLA, J. S

2 A F T E R N O O N S E S S I O N

3 2:00 P.M.

4
5 (Jury in box.)

6 THE COURT: Members of the jury, we have read
7 almost the ultimate stage of these proceedings. The ultimate
8 stage will be when you go to the jury room and arrive at a
9 verdict. But this is the time, you will recall, that I told
10 you I would instruct you on the law.

11 At the outset, I want to thank you for the
12 careful attention you have paid to the case, and although it
13 has been a short case, it is an important case to both the
14 Government and to the defendant. You have given it the atten-
15 tion which it deserves. I also want to thank Mr. Diskant,
16 the United States Attorney, and Mr. Chase for the assistance
17 that they have been to the Court and to you. They really
18 narrowed the issues down to the point where it makes sense,
19 and I think that is a good thing, because I feel lawyers many
20 times in less complicated cases make the matters more obscure.
21 These lawyers have not done that. They have narrowed the
22 issues down to what you should consider here.

23 The nub of the case is whether there was knowl-
24 edge that this money was counterfeit, that it was bad money.
25 But it is not as simple as that, because we still have to go

2 through a proceeding and find out whether the Government has
3 proved the elements of all these crimes involved in this case,
4 these three charges. So on your behalf and on my behalf I
5 thank the lawyers for their assistance.

6 The facts in the case are not very complicated
7 and they don't extend over a great period of time. I don't
8 intend to go into the facts myself in any great detail, and
9 when I do refer to the facts, it will only be to illustrate
10 to you how the principle of law applies. Both lawyers have
11 covered the facts thoroughly, and I am sure they are fresh in
12 your minds.

13 I might indicate to you that the facts in the
14 case are determined only by you. What the Court says about
15 the facts, what the lawyers have said about the facts don't
16 bind you in any way whatsoever, because you are the sole and
17 sovereign judges of the facts. You are the sole judges of the
18 credibility of the witnesses in this case. Questions of law
19 you must accept from the Court, and you must apply the law to
20 the facts as you find them.

21 A defendant in a criminal case is presumed by
22 law to be innocent, and that presumption remains with him
23 throughout the trial, unless and until he is proven guilty of
24 the crime charged by the credible evidence beyond a reasonable
25 doubt. The burden of proving the defendant's guilt beyond a

2 reasonable doubt rests with the Government, and this burden
3 never shifts throughout the trial.

4 The law does not require the defendant to prove
5 his innocence or to produce any evidence. He may rely upon
6 evidence brought out on cross-examination of the witnesses for
7 the Government, and if the Government has failed to prove the
8 defendant's guilt beyond a reasonable doubt, it is your obli-
9 gation to acquit him.

10 The tool used in order to present facts to you
11 during the course of the trial is called evidence. Evidence
12 can be described in a number of ways. The first way that I
13 would describe it to you would be quantitatively and qualita-
14 tively. That means the amount of evidence that is necessary
15 and the kind of evidence that is necessary. The kind of
16 evidence that is necessary, the quality of it must be credible,
17 believable evidence; the quantity of it must be beyond a
18 reasonable doubt.

19 Now, that term, "reasonable doubt," is defined
20 as follows: a reasonable doubt means a doubt that is based
21 upon reason and must be a substantial doubt, rather than a
22 speculative doubt; it must be sufficient to cause a reasonable
23 prudent person to hesitate to act in the more important
24 affairs of his life. Such a doubt can arise from the evidence
25 which has been produced or from the lack of evidence.

2 Evidence can be described also in the following
3 fashion, first, testimonial. That means people come here,
4 they take the stand, they take an oath, and then they tell
5 you what they learned by the use of their senses. This includes
6 not only what they actually say, but sometimes includes panto-
7 mine or some gestures that they make; it includes any natural
8 inferences which flow from their testimony; it includes any-
9 thing which is brought out on direct examination, cross-exami-
10 nation, or any examination while that witness is on the stand.

11 The second device in the way of describing
12 evidence are the exhibits. Now, keep in mind, however, that
13 the only exhibits that are in evidence are the ones that have
14 been marked in evidence. If they have only been marked for
15 identification -- and there is a long page report here which
16 is only marked for identification, to illustrate the point --
17 you may not speculate as to what is in the rest of the report;
18 you only may consider evidence that was read from the report
19 and which you heard during the course of the trial, and any
20 natural inferences that flow from that. But you may not
21 speculate as to what might have been or could have been or
22 possibly was in the rest of the document, because that is not
23 evidence.

24 The next device in the area of evidence is
25 called stipulation, and that simply means an agreement between

2 the parties. I think there were a couple of stipulations in
3 the case. I don't recall them offhand, but whatever was
4 stipulated between the parties is evidence in the case and
5 must be considered by you as such and must be used by you in
6 coming to a determination in this case.

7 The last device in this area is called judicial
8 notice. There are things which are so-well known that we
9 don't require proof of them. The Court judicially knows that
10 as a fact, and in this case I call your attention to the fact
11 that Korvette's in the Bronx is in Bronx County and Bronx
12 County is one of the counties in which this Court has juris-
13 diction, and, therefore, you have a right to hear the case.
14 That is the only purpose judicial notice is served in this
15 particular case.

16 Another way of defining evidence is what is
17 called direct evidence and circumstantial evidence. And before
18 I define those terms for you, I will indicate to you a defen-
19 dant may be proven guilty either by direct or circumstantial
20 evidence, or a combination of both. Direct evidence is the
21 testimony of one who asserts actual knowledge of a fact, such
22 as an eyewitness. Circumstantial evidence is proof of a chain
23 of facts and circumstances indicating the guilt or innocence
24 of the defendant. The law makes no distinction between the
25 weight to be given to either direct or circumstantial evidence.

2 It only requires that after weighing all the evidence you must
3 be convinced of the guilt of the defendant beyond a reasonable
4 doubt before you may convict him.

5 Now, this particular definition of evidence,
6 direct and circumstantial, is very important in this litigation
7 that we have before us, because the very nub of the case
8 as described to you by both Mr. Chase and Mr. Diskant is
9 knowledge.

10 Knowledge is a mental operation. You don't see
11 it. And, so, therefore, what is important for you to do is
12 to look and see the surrounding circumstances and what has
13 been testified to that you believe and then come to a conclusion
14 as to what that particular person is thinking.

15 From time to time, I am sure, you saw me pick
16 up this glass and take a drink of water during the course of
17 this trial. When you saw it for the first time you said to
18 yourselves, "Well, he is going to take a glass of water." It
19 is possible, of course, that I might have just used the water
20 to clean my glasses. So you couldn't really tell that, until
21 I picked it up and took it to my lips. But from the circum-
22 stantial evidence that you gained during the course of this
23 trial, you know I ordinarily fill this drinking glass to
24 drink, so you can make the judgment that I am going to fill
25 it to drink water. That is circumstantial evidence.

2 I will give you another example of circumstan-
3 tial evidence, how it can be used, and what are the various
4 elements that are necessary for you to consider.

5 Some children are brought to school and the
6 teacher is going to play what I would call "touch and tell".
7 So we blindfold the children, five or six of them, and bring
8 them to a particular place and say, "Now go in and feel around."
9 And she asks the first child she is speaking to, "What is it?"
10 Mind you, the child, of course, is blindfolded. He says,
11 "It is a lip."

12 She goes to the next child and she says, "What
13 do you feel?"

14 "I feel the trunk of a tree."

15 She goes to the next child and she says, "What
16 do you feel?"

17 "I feel a big leaf."

18 She goes to the next child and says, "What do
19 you feel?"

20 "I feel a rubber hose."

21 Now, can you conclude what it is that the
22 children have been feeling? Of course, it's an elephant.
23 But, you see, the point of the matter is that one child could
24 not make a judgment as to what he felt. The one that felt it
25 first thought it was a lip, the one that felt the leg thought

2 it was a tree. So in considering this, you consider the
3 totality of the evidence in this case, all the remarks that
4 were made, all the testimony of the surveilling witnesses,
5 everything in the case, and then you come to a conclusion at
6 the end of the case whether this defendant was acting knowingly
7 or not. This will be detailed more later on when the elements
8 of the crime are described to you. But we don't depend only
9 on numbers, because you can multiply numbers to any extent and
10 it would not help you. What you must depend upon is not only
11 the nature of the pieces of evidence that are concerned, but
12 the quality of the pieces of evidence that are concerned. And
13 so you will make a judgment on that in these areas where
14 mental operations are concerned, and circumstantial evidence
15 will assist you in arriving at a conclusion.

16 The next area which I will discuss with you
17 concerns evaluating the evidence. You are perfectly aware
18 that we do not have an IBM machine which can help us in deter-
19 mining where the truth lies in this case, because if we had
20 such things we would probably be using them. We don't have
21 them. But Anglo-American juries for many years have been
22 using certain norms to assist them in arriving at where the
23 truth lies in a case.

24 The first I would call to your attention is the
25 demeanor of a witness, how he or she acts on the stand, how he

1 or she answers the questions. Do they ask questions in order
2 to beg for time, to think more? In other words, you should
3 not leave your common sense outside the jury room. You should
4 also analyze the witnesses, look at them, observe their
5 demeanor and remember how they looked and how they testified
6 and then make that same fine discernment which you do in your
7 everyday life in matters of great importance to you, using
8 your common sense.
9

10 Of course, one of the things that would assist
11 you in determining the truth of the matter, the truth of the
12 testimony, would be the interest that a particular person
13 has in the litigation. The agents, of course, are employees
14 of the Government and they have a job which depends upon their
15 performance. You have had testimony here from a number of
16 witnesses employed by the Government. Just because a witness
17 is employed by the Government does not mean he is entitled to
18 greater credibility. I told you that when you were picked
19 as jurors. But, on the other hand, he is not less believable.
20

21 It is for you to decide how much, if at all, a
22 witness' interest as a Government employee may affect his
23 testimony. That is a judgment for you to make after listening
24 to these witnesses.
25

The defendant in this case, of course, may be
a witness, and he is a competent witness. His testimony should

2 not be disbelieved merely because he is a defendant. However,
3 in weighing his testimony, you should consider the fact that
4 he has a vital interest in the outcome of this trial and may,
5 indeed, go to jail if he is found guilty in this case. So you
6 will keep in mind his interest.

7 If you find that any witness in this case has
8 falsely testified to any material fact, you must disregard
9 that portion of the testimony which you believe to be false,
10 or you may disregard his entire testimony, or you may accept
11 part of his testimony. I will describe to you mostly by
12 example, and the ladies will probably understand more than
13 the men how this rule works. If, for example, you are baking
14 toast and you burn a part of it, it is very simple matter to
15 scrape off the burned part and eat the rest of it. That is
16 how one part of the rule works. On the other hand, if you are
17 making an omelet and you put in a rotten egg unknowingly, but
18 then when you cooked it you could smell it and you knew it was
19 bad, you can't separate that, you have to throw it all away.
20 So when part of the testimony is false, you may disregard
21 that, the rest of it you may accept if you so desire to do so.

22 In evaluating the testimony, which is the area
23 we are talking about now, we come to some opinions which were
24 given by one of the witnesses. Ordinarily, witnesses are not
25 allowed to give opinions. But there is an exception to that,

1 and that is where you have what is called an expert witness,
2 that is a witness who by learning or training has special
3 knowledge and he can be of assistance to you. Therefore, in
4 that area he is allowed to give you his expert opinion. That
5 could be a plumber, a doctor, or an Indian chief. It does
6 not make any difference, as long as he has the necessary
7 background.
8

9 One of the witnesses here was qualified as an
10 expert in examining money to determine whether it was counter-
11 feit, and he has given an opinion that this money is counter-
12 feit. Now, the opinion is not conclusory on you; it is
13 advisory. You don't have to accept it. However, you must
14 examine into his background and determine whether you feel
15 he has had sufficient experience to make such a judgment.
16 Then if you find that that is the fact, you can consider his
17 opinion. But it is not binding upon you, as I indicated
18 earlier.

19 I have told you how to evaluate evidence. Now we
20 go to another area which involves what is not evidence, what
21 you may not consider, what you should keep out of your minds.

22 The first is the indictment in this case. You
23 will get a copy of this indictment and you will have it in
24 your jury room. But it is not evidence. It is only an accus-
25 ation. I explained that to you once before. This is only the

charge. The defendant has pleaded not guilty to these charges. The defendant has, therefore, put in issue each one of these three charges, and the Government must prove every material element of these charges beyond a reasonable doubt before you may convict him. This is only an accusation.

Questions which are asked during the course of the trial to which there was no answer are not to be considered. In those cases you may not consider as evidence what was contained in the question as a fact. For example, it is an old chestnut, but the question to the witness is, "When did you stop beating your wife?" And there is an objection and there is no answer. In a case like that you could never infer or take as a fact that the man ever beat his wife, because there is no proof of it. The evidence in the case are the answers, not the questions.

Any colloquy between the Court and the lawyers, or between the lawyers themselves, in which facts were mentioned are not evidence, because none of us was sworn and we did not testify in this case.

Any comments made by the Court during the rulings and what took place up here at the bench, if you did hear anything of that, I indicate to you that those rulings were on matters of law and should not be considered by you in any way as far as determining what the evidence is. They do

not concern your obligation; they concern something between the Court and the lawyers.

The indictment in this case has three Counts. The first Count is based on Title 18, Section 371, which is the conspiracy Count. The second two Counts are based on the same Title 18, Section 472. And there are some common phrases used in the three charges and there are some other phrases, which I will define to you, so that when you get to consider them you can determine what they mean as far as the indictment is concerned.

The first I will call your attention to is that each one of the Counts says that the defendant did act unlawfully, wilfully and knowingly. Now, "unlawfully" means in this particular case against the Federal law. And the particular section that we are concerned with is within the conspiracy section, and the other involving the counterfeit money. Those are the Federal laws we are talking about.

To act "knowingly" means to act voluntarily and intentionally, not because of mistake, inadvertence, accident, or some other innocent reason. That is the very basis of our criminal law. If I hold this pen and let go of it, it drops. Every time that I do that, the law of gravity operates, operates universally, operates all the time. There is nothing that I can do about it. But we as human beings are different.

2 We can make a choice. We have will power. It is because that
3 we have this right to make a choice that we have responsibility
4 And if Congress says, "You may not do this," and then you do
5 it and do it wilfully, do it knowingly, then you become
6 responsible. And so in this case, for example, you have to
7 determine whether this defendant acted knowingly, not because
8 of some innocent explanation or some inadvertence, or by
9 accident, or for any other reason.

10 But to act knowingly is not enough. He must
11 also act wilfully, which is also concerned in this area of
12 criminal responsibility. Now, to act wilfully means to act
13 knowingly, deliberately, and with a bad purpose. But it is
14 not necessary that the defendant know he is breaking any
15 particular law by section or number. He must act with a bad
16 purpose. The Romans called this the mens rea, the evil
17 intent. And so that is the way he must act before you may
18 find him guilty as to these charges. And when those words
19 are used in these sections, that is the meaning of them.

20 This crime cannot be committed by mistake. In
21 order to commit this crime, this defendant had to have a
22 specific intent to commit the crime. This crime requires
23 specific intent before the defendant can be convicted.
24 Specific intent means more than the intent to commit an act.
25 To establish specific intent in the contents of this case

means that the Government must prove beyond a reasonable doubt that the defendant acted knowingly, that he did an act which the law forbids, and that he did it purposely, intending to violate the law.

Proof of intent may be discussed in the following fashion: it has been stated frequently that what you bring into the jury box is your common sense and the experience of your daily lives. And this is where the direct and circumstantial evidence definition that I gave you before will help you out. You cannot look into a person's mind and see what his intentions are or were, but a wise and intelligent consideration of all the facts and circumstances shown by the evidence and the exhibits in the case will enable you to infer what was the defendant's intention at the time he committed the act. Proof of knowledge and intent is very important in this case. The defendant claims that he did not know the bills were counterfeit until the agents told him they were. To determine whether the defendant had the requisite knowledge and intent to be found guilty of the crimes charged in the indictment, you must consider all the evidence and natural inferences to be drawn from the evidence.

In this regard you have heard the testimony that the defendant made certain statements shortly after his arrest on June 2. First he said that he knew the bills were

2 false. And then he said he had no such knowledge and only
3 gave the earlier statement to prevent Roberto from getting
4 into further trouble, and because at that time he didn't
5 realize that he, too, was in trouble. The Government claims
6 that he knew the bills were false all along and that the
7 later statement denying such knowledge was an attempt to
8 exonerate himself. If you believe that the later statement
9 was false, that he actually knew the bills were false all
10 along, you may infer from the defendant's giving a false
11 statement consciousness of guilt. Whether or not such evi-
12 dence points to guilt, however, and how much weight you attach
13 to it is for you to determine.

14 The fact that the defendant made these state-
15 ments, first acknowledging that the bills were counterfeit,
16 and then later saying no, that is not so, that, in effect,
17 was an exculpatory statement if it is believed. Evidence has
18 been introduced that the defendant made such exculpatory
19 statement in the District Attorney's office, explaining his
20 actions to show that he was innocent of the crime charged in
21 indictment. Now, of course, there is the other statement that
22 he made earlier that directly contradicts this. As I said,
23 if you find that the exculpatory statements were untrue, that
24 the defendant made them voluntarily with the knowledge of
25 their falsity, you may consider such statements as circumstan-

tial evidence of the defendant's consciousness of guilt. These statements were not allowed to show that he made the statements to exculpate himself and lied and, therefore, he was guilty of the crime. That is not what they were allowed for. The only reason they were allowed in the case at all was on the question of his credibility, his believability and that is all period.

The first charge in this indictment is the conspiracy, Section 371. I read it to you once before, but it is very short. It reads as follows insofar as it applies to this case: if two or more persons conspire to commit any offense against the United States, and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of the conspiracy. Congress has seen fit to make conspiracy a separate crime, to have an agreement and to perform what is called an overt act, to do something. That does not even take into consideration whether the agreement is successful or not. It does not make a bit of difference whether it is or isn't. If you have an agreement and you do something in furtherance of it, an overt⁴ act, that completes the conspiracy; that is it. And if you then go out and do something, that becomes a separate crime, which is called the substantive crime, which is apart and separate from the conspiracy charge.

Now, a conspiracy is a combination of two or more persons to accomplish an unlawful purpose. While it involves an agreement to violate the law, it is not necessary that the persons meet together and enter in any express or formal agreement, or that they state in words or writing what the scheme is or how it is to be effected. It is sufficient to show that they tacitly came together in a mutual understanding to accomplish the unlawful act. Such an agreement may be inferred from the circumstances and the conduct of the parties, since conspiracies are characterized by secrecy.

In determining whether a conspiracy existed, you should consider the actions and declarations of all the alleged participants. Mere association does not establish a conspiracy. Nor is knowledge of a conspiracy without participation therein sufficient to constitute membership. What is necessary is that the defendant participate with knowledge of at least some purposes of the conspiracy and with an intent to aid in the accomplishment of the unlawful end. Whether or not a defendant is a member of a conspiracy must be determined from the evidence that you have heard as to his own conduct and his own statements and declarations, his own connection with the acts and declarations of the other alleged co-conspirators. You may also weigh and consider the acts and declarations of the other co-conspirators made in the course and in

furtherance of the alleged conspiracy bearing on the question of the defendant's membership in the conspiracy. To be a member of a conspiracy, a defendant need not know all the other members, or who are involved, or, indeed, know all the details of the conspiracy, nor the means by which the objects of the conspiracy are to be accomplished. Each member of the conspiracy may perform separate and distinct acts. It is necessary, however, that the Government prove beyond a reasonable doubt that the defendant was aware of the common purpose, was a willing participant with an intent to advance the purposes of the conspiracy.

One who knowingly and wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the instigators of the conspiracy. The extent of the defendant's participation in a conspiracy is not determinative of his guilt or innocence; a defendant may be convicted as a conspirator, even though he plays a minor part in the conspiracy. His financial stake, if any, in the venture is a fact to be considered in determining whether a conspiracy exists and whether a defendant was a member of it. It is not necessary that all of the overt acts charged in the indictment -- and there are two charged here -- be proven. One overt act is sufficient. An overt act is any act committed by one or more of the conspirators to accomplish the purpose

of the conspiracy. It need not be a violation of the law. And other conspirators need not join in it or even know about it. If, for example, I were to enter into a conspiracy to rob a bank with three other persons, and somebody went to the 5 and 10 and bought a flashlight, and then later that flashlight was used in the robbing of the bank, the act of buying that flashlight is an overt act in furtherance of the conspiracy to rob the bank, and although of itself it is a perfectly legal act, since anybody can buy a flashlight, however, if it is used for the purpose and in furtherance of the conspiracy, it is an overt act done in furtherance of the purposes or objects of the conspiracy.

If you find beyond a reasonable doubt that a conspiracy existed as charged in the indictment and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy in the offense is complete and anyone who has joined the conspiracy wilfully and knowingly then becomes responsible and is guilty of conspiracy.

There are two further charges in this indictment, the second and third Counts, and they involve an understanding of the word "possession." Now, possession can be of two kinds. It can either be actual possession, where I

1 physically hold something, or it can be constructive posses-
2 sion. Constructive possession means that I have the power to
3 exercise dominion and control over something. My coat, for
4 example, is in my chambers, and I have constructive possession
5 of that, even though I don't have it on, because all I have to
6 do is get it myself, or tell my law clerk to bring it to me.
7 I exercise dominion and control over that. When we are talking
8 about possession here, we are talking about the money that was
9 in the car. There is not any question at all from the evi-
10 dence in this case, as I understand it, that the defendant did
11 have actual possession of this money from the time Vasquez
12 gave it to him, when they were going to Korvette's, until they
13 got over to Korvette's. Now, of course, the relevant portion
14 there, however, is not that he had possession, because that I
15 am sure the defendant would be willing to concede. In fact,
16 he testified to that himself. But what he is arguing is that
17 he did not have knowing possession, that he did not know what
18 was in the package. Possession does not depend upon owner-
19 ship, either. If you go to Hertz and you rent a car, they
20 give you a car, and you got actual possession of the car,
21 but you don't own it. So the fact that it has not been
22 established in this case, for example, that this defendant
23 owned the money, that does not mean to say he could not
24 possess it, because you can possess something that you don't
25

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2 own. That happens every day of your own knowledge.

3 There is another phrase in here, which is
4 "intent to defraud." And you heard that discussed during the
5 summation. To act with intent to defraud means to act wil-
6 fully and with the specific intent to deceive or cheat. The
7 evidence need not establish, however, that the United States
8 or any person was actually defrauded.

9 To do something wilfully means to do something
10 voluntarily, intentionally, with specific intent to do some-
11 thing that the law forbids, that is, intent to defraud in
12 giving a counterfeit bill to another with the intent that the
13 bill be put in circulation. But that depends upon knowledge.
14 You can't do that just by accident. But if you know that you
15 got counterfeit money and you know it is going into circula-
16 tion, you may infer from that that there is an intent to
17 defraud.

18 So now we come to the first Count in the indict-
19 ment, which I am holding up to you. I know you can't read
20 it from here. But these are the elements which the Government
21 must prove by credible evidence beyond a reasonable doubt
22 before you may convict this defendant. The first element is
23 that the conduct occurred between May 23 or May 24, 1977, and
24 June 2, 1977. That is the first element. And there is evi-
25 dence in the case that they were there on June 2.

1
2 The second item is it was in the Southern
3 District of New York. And I take judicial notice that this
4 area was within the Southern District of New York.

5 The third element is that the defendants -- and
6 now we are talking about the defendant in this case -- acted
7 unlawfully, wilfully and knowingly. I have described what
8 that means to you, that he could not have been in this by
9 mistake or inadvertence or good faith; he could not have been
10 an innocent bystander; he must act voluntarily, with an under-
11 standing of all that is going on and that he is violating the
12 law.

13 Then it goes on to say "did combine, conspire, and
14 confederate together" which essentially means that there was
15 an agreement. Now, that agreement, as I explained to you in
16 describing what a conspiracy is, can be ascertained from the
17 surrounding circumstances; it need not be in writing, with an
18 intention to commit a violation against the law of the United
19 States, and the law they are talking about is the counterfeit
20 law, 472. That first paragraph charges the conspiracy.

21 The second paragraph charges the means by which
22 it was to be done, and that was, to sum it up in one or two
23 words, to sell or attempt to sell the counterfeit money. That
24 was the means to be used. So that if you find that the Govern-
25 ment has proven all these five separate items which are

2 brought to your attention by credible evidence beyond a reason-
3 able doubt, then you should convict the defendant as to the
4 first Count of this indictment.

5 On the other hand, if the Government has failed
6 to prove any one or more or all of these elements by credible
7 evidence beyond a reasonable doubt, then it is your obligation
8 and you must acquit the defendant.

9 This requires you to consider the evidence in
10 the case concerning this particular area and make a determina-
11 tion based on your judgment.

12 Now, the overt act which is mentioned here --
13 and there are two of them and one of those must be proven --
14 the Government does not have to prove both; either one is
15 sufficient -- the first one is that on May 31, 1977, Vasquez
16 had a conversation concerning the sale of \$14,000 in counter-
17 feit Federal Reserve Notes, and the second one is that on
18 June 2, 1977, both of them went to the vicinity of White
19 Plains Avenue and Bruckner Expressway in the which is
20 the place near Korvette's. The Government need prove only
21 one of those.

22 Now we come to the second charge. I might point
23 out to you that in reference to the first Count, to find the
24 defendant guilty of the first Count you need not find that
25 the defendant actually violated the law against counterfeiting,

because the essence of the crime of conspiracy is the agreement, and that does not depend upon success in the venture at all.

As far as Counts 2 and 3 are concerned, the defendant is charged with having violated parts of Section 472, and it is divided into two parts, because there are two separate allegations of violations of that same particular section.

As far as the second Count is concerned, Count 2, the first thing it says that it happened on or about June 2, 1977. And you have heard the evidence on that. I think everybody agrees that whatever happened here happened on June 2.

Secondly, that has happened in the Southern District of New York, and I have already taken judicial notice that is within this District.

Third, that the defendant acted unlawfully, knowingly and wilfully, and with intent to defraud. I have defined those terms to you a number of times, and I think you fully understand that unless he acted knowingly, wilfully and unlawfully, he may not be found guilty of this charge. He must have acted freely and voluntarily, with knowledge, not through mistake, and he must have acted to violate the section of the law involved here.

The next is that he did keep in his possession

1 and conceal certain falsely made, forged, counterfeit and
2 altered obligations, securities of the United States, 43 \$5
3 Federal Reserve Notes, and that concerns the \$210 that he had
4 in his pocket and the \$5 that he had in his wallet. You have
5 heard the evidence on that. So that in this particular case
6 if the Government has proven these different elements which I
7 just described to you by credible evidence beyond a reasonable
8 doubt, then it is your obligation to convict the defendant.

9
10 On the other hand, if the Government has failed
11 to prove any one or more or all of these elements, then it is
12 your obligation, and you must acquit the defendant. You have
13 heard the various contentions made by both sides in this
14 particular area. You must consider each of these charges
15 separately and make a judgment on them separately. Consider
16 what the lawyers have said and what the testimony in the case
17 as far as each of these Counts is concerned separately.

18 Now we come to the last Count, and that is
19 Count 3. Here again the first thing you have to find is that
20 it happened around June 2, 1977, and I think everybody agrees
21 that is the proper date. Secondly, that it happened in the
22 Southern District of New York. And I have taken judicial
23 notice that that is in this District. Thirdly, that the defen-
24 dant and Roberto u lawfull, knowingly and wilfully, and with
25 intent to defraud committed certain acts. And I have defined

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2 what that means to you. Fourth, that there was an attempt to
3 sell or to possess or conceal, and those have the ordinary
4 English meanings. To sell, of course, means to give something
5 with money in return. Possession I have already defined to
6 you. And, lastly, that it involves counterfeit \$5 Federal
7 Reserve Notes, approximately 2800, which is approximately
8 \$14,000. Now, if you find that the Government has proven all
9 of these five elements by credible evidence beyond a reasonable
10 doubt, then you should convict the defendant. On the other
11 hand, if the Government has failed in any one or more or all
12 of these elements to satisfy you by credible evidence beyond
13 a reasonable doubt, then you must acquit the defendant.

14 As far as all these Counts are concerned, I
15 instruct you as a matter of law that \$5 Federal Reserve Notes
16 are an obligation of the United States, as cited in the
17 statute.

18 Now, in a case where there is more than one
19 defendant involved, there is no need for the Government to
20 prove that each defendant did every act. The guilt of a
21 defendant may be established without proof that he personally
22 did every act constituting the charge. That is so because
23 there is a federal statute which provides as follows: whoever
24 commits an offense against the United States, or aids, abets,
25 counsels, commands, induces or procures its commission, or

wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

In order for you to find that the defendant aided or abetted another in the commission of a crime, it is necessary to find that he acted wilfully and knowingly, that he associated himself with the venture in this fashion, knowing the essential elements of the offense, and wilfully participated to make it successful. One who aids and abets in the commission of a crime is equally guilty with the person who actually and physically commits it. However, where he is merely present on the scene and may even have knowledge of the crime that is being committed, that is not sufficient to establish that the defendant aided and abetted in the crime. In order to do that, you must find beyond a reasonable doubt that the defendant was a participant, was not merely a knowing spectator. If he acted in concert with the other person, he is guilty of the crime; otherwise, he is not.

Sympathy and bias play no part in this case, and you are not being asked to perform your functions as a juror on that basis. You took an oath and you would stultify that oath if you were to perform your functions as a juror on that basis. The basis for your judgment here is the evidence that you have heard and the law as given to you by the Court. Nor

1 should there be concern on your part about any possible
2 punishment. The fact that I am discussing punishment does not
3 mean to say I have any idea at all whether this man is guilty
4 or not. That is not my job; is your job. Punishment
5 should not be a part of your discussions, because if there is
6 to be any punishment in this case it would be the Court that
7 does it. You have no part in it whatsoever. And there is a
8 very simple reason for you to keep out of this area; it can't
9 possibly help you decide the facts. In no way.

11 The verdict, Madame Forelady, must be unanimous.
12 That means that all twelve of you must agree. All twelve
13 jurors must agree. There are two possible verdicts as to each
14 of the three Counts -- guilty or not guilty. You must make
15 a judgment on all of the three Counts in that fashion. And
16 as I said before, you must do it by giving separate considera-
17 tion, coming to a separate judgment.

18 I urge you to consult one another and to deliber-
19 ate with a view to reach an agreement, if you can do so
20 without violating your individual judgment and conscience.
21 Discuss the case with one another. Don't go in with any pre-
22 conceived ideas and say, "Well, I am not going to listen to
23 anybody." Keep your mind open and arrive at a judgment which
24 is in accord with your conscience. In this case you are not
25 partisans; you have no side in the case at all; all you are

seeking is the truth, and that is your sole function.

Now, if there comes a time when there is a disagreement between you as to what the testimony was, taking an example in this case, what the lawyers have been talking about, when the defendant was at the car and he saw them at the other car, his own car, the car that was described as the one he came in, and he said, in effect, to the other agent, "Look, those guys there, dealing with that stuff with the doors open," or some such remark, if there is a disagreement between you as to what was said, if some of you say, "I think what happened was that the defendant testified that he did not say all of that, that the agent said that he said so and so," if there is any disagreement about that testimony or any testimony in the case, we can have the reporter read it to you. We have it all down and he will read back exactly what was said. Also, the exhibits in the case are for you to examine. Both lawyers indicated that. In any event, you would be entitled to them. And if you have any communication with the Court, Madame Forelady, if any of the jurors has any communication with the Court, it is done through you. You write the note and sign your name. They can ask any question that comes to mind that can assist them in coming to a judgment. But it is done through you. You put it in an envelope and seal it and give it to the Marshal.

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2 I have one last time when I talk to the lawyers,
3 and if you will excuse me, we will do that now and then we
4 will continue on.

5 (At the side bar.)

6 MR. CHASE: Your Honor, I would ask that you
7 instruct the jury that when they consider the proof in the
8 case they may consider the evidence or the lack of evidence.

9 THE COURT: I already said that.

10 MR. CHASE: I may have misheard, but I do not
11 recollect it myself.

12 THE COURT: I said it specifically. I will show
13 it to you.

14 MR. CHASE: Your Honor, it might be on the card.

15 THE COURT: I said it. I said it specifically.

16 MR. CHASE: I may have misheard you.

17 THE COURT: I said it specifically. I'm posi-
18 tive of that.

19 MR. CHASE: I would ask for a repetition.

20 THE COURT: No.

21 MR. CHASE: My second request, to make it
22 absolutely clear to the jury that if they think you have any
23 view on the guilt or innocence of the defendant, that it is
24 absolutely irrelevant to their consideration.

25 THE COURT: I decline to do so.

MR. CHASE: I ask that you give the very same wording you gave in the Hyerson case, that in order to be found to be a member of a conspiracy, the defendant must in a sense promote the venture, make it his own, or have a stake in the outcome. I would ask that you give that.

THE COURT: I decline to do so.

MR. DISKANT: I have one request, that you instruct the jury that although the indictment charges the conspiracy took place between May 24 and June 2, 1977, it is sufficient to find that it took place at any time during the time period.

THE COURT: I decline to do so. I think they have sufficient instructions on that. But I am looking for my card to persuade Mr. Chase.

MR. CHASE: I don't disagree with what is on the card.

(In open court.)

THE COURT: I want to thank you, Mrs. Wade and Mr. Murphy, for the assistance you have been to the Court. The statute directs I must excuse you at this time, but I do so with the thanks of the Court. We appreciate your service.

THE CLERK: Will you kindly return to Room 109 now. Please take your cards with you.

(Alternate jurors excused.)

(Marshal sworn.)

(The jury retired to begin its deliberations
at 3:00 p.m.)

(At 4:30 p.m. in the absence of the jury.)

THE COURT: We have notes from the jury. The
first one is they would like to examine the \$210. That is
Exhibit 5 or 5-A.

MR. DISKANT: That is Exhibit 5, your Honor.

THE COURT: "How much money did he have" -- it
is very hard to read it -- "real money?"

I think the evidence is he had \$124 and he
remembers something over a hundred dollars.

MR. DISKANT: That is correct, your Honor.

THE COURT: I will read the note now that I
have some light: "How much money did Vinicio Paradis have of
his own, real money?"

And that was --

MR. DISKANT: There is no direct evidence of
that. I asked him that question.

THE COURT: No, wait a minute. The agent
testified he seized \$124 from him.

MR. DISKANT: The agent didn't know exactly how
much it was, either. Our records indicate that it was \$124.

I asked him that. He said it was over \$100.

THE COURT: I am aware of that, because that is the next question. So I will simply say, "There is no evidence before you as to the exact amount, but in his testimony he said it was over one hundred dollars." Is that all right, Mr. Chase?

MR. CHASE: Yes, your Honor.

THE COURT: Is that your recollection?

MR. CHASE: Yes.

THE COURT: They want the Court's opinion can the car be sold legally without having legal ownership as the car was registered in the car service's name. My answer to that is that the only evidence we have on this is the defendant's own statement that the car, although it was in the name of the corporation, was his car, and, if it was his car he would have the right to sell it.

MR. DISKANT: That is agreeable with the Government.

THE COURT: Is that all right, Mr. Chase?

MR. CHASE: Yes.

THE COURT: They want to hear the testimony when the defendant was on the way to the Treasury Department office when the defendant said he knew the money was counterfeit.

MR. CHASE: That might be a little difficult.

It is not just in one place.

THE COURT: Well, they want to hear the testimony.

MR. DISKANT: I'm not clear.

MR. CHASE: We will have to make the search.

THE COURT: On the way to the Treasury Department office when he said the money was counterfeit.

MR. DISKANT: In Calzada's testimony or the defendant's testimony or both?

THE COURT: It doesn't say what they mean. We will ask them whether they want the defendant's testimony or the agent's testimony or both. My recollection is that this testimony didn't happen on the way down to the office, but after he got there.

MR. DISKANT: That is correct.

MR. CHASE: My recollection, your Honor, is that the defendant was shown the money by Agent DeVita, who had searched him and who was also in the car accompanying him to headquarters.

THE COURT: But it was downtown.

MR. DISKANT: The time when the defendant said it was counterfeit was downtown.

MR. CHASE: He was told it was counterfeit on

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2 the way.

3 MR. DISKANT: The question is when did he say
4 it was counterfeit.

5 THE COURT: When did the defendant say he knew
6 the money was counterfeit. Well, we will find out when.

7 MR. CHASE: That I think is something we can
8 probably agree on. I think the Government will agree he knew
9 it was counterfeit on his first interview by Agent Calzada.

10 THE COURT: (To the court reporter.) See if
11 you can find that portion of the testimony. In the meantime,
12 we will bring the jury in and give them this exhibit. Maybe
13 the reporter can find what they want right away.

14 MR. DISKANT: I thought you would inquire which
15 they wanted, either Calzada or the defendant or both.

16 THE COURT: I will inquire of them.

17 MR. DISKANT: I now recollect that Agent Calzada
18 didn't testify about that, and it is only the defendant's
19 testimony.

20 (At 4:40 p.m. the jury took its place in the
21 jury box.)

22 THE COURT: I have some notes from the jury.
23 The first reads, "I would like to examine the \$210." And it is
24 signed by the Forelady.

25 Would you please give them Exhibit 5, I think

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2 that is.

3 MR. DISKANT: Yes.

4 THE COURT: Hand it to the Forelady.

5 MR. DISKANT: I am now handing it to the Fore-
6 lady.

7 THE COURT: The next note reads, "How much did
8 Vinicio Paradis have of his own, real money. Paradis' state-
9 ment."

10 Well, there was no exact amount mentioned. The
11 only amount that was mentioned was that it was over a hundred
12 dollars, and that was the testimony in the case.

13 The next note says: "Court's opinion. Could
14 the car be sold legally as the car was registered in car
15 service name."

16 And that is also signed by the Forelady. The
17 only testimony in this case is the defendant's own statement
18 that although the car was in the corporate name, it was his
19 car, and if it was, in fact, his car, he could sell it.

20 Then the next note says you want the transcript
21 on the way to the Treasury Department office when the defen-
22 dant said he knew the money was counterfeit.

23 The lawyers agree that this did not take place
24 on the way down to the Treasury Department; it took place when
25 they got to the Treasury Department and had this conversation.

We are trying to find that place in the record. It is going to take the reporter a little while to do that, and as soon as he finds it we will read it to you.

I will tell you what is probably better. You have been deliberating for some time, and I admire you for doing that, and I think that is exactly what you are supposed to do, to give this case the careful attention that it deserves. But I don't see any reason why you should wait here while the reporter goes through this, because it is going to take him ten or fifteen minutes to do it. So I am going to excuse so you can get a good night's rest and come back tomorrow morning and pursue your duties further. The first thing we will do is to have the reporter read that part of the transcript to you. In the meantime, don't discuss the case. Go home and get refreshed and get a good night's sleep, and then come back tomorrow morning. Please be back here tomorrow morning at ten o'clock and continue your deliberations. When you come here at ten o'clock, don't discuss the case until everyone is present. When everyone is present, of course, you may continue with your deliberations. At this time you are excused.

(Whereupon, an adjournment was taken to
November 4, 1977, at ten o'clock a.m.)

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2 UNITED STATES OF AMERICA,

3 vs.

77CR561

4 VINICIO PARADIS,

5 Defendant.

6 November 4, 1977
7 10:00 A.M.

8 (In the absence of the jury.)

9 THE COURT: I understand that the reporter has
10 the matter.

11 MR. CHASE: I think there are a few house-
12 keeping details that we can take care of preliminarily before
13 the jury is brought in. I believe yesterday quite inadver-
14 tently your Honor may have slightly misstated --

15 THE COURT: Yes, I did. I will correct that.

16 MR. CHASE: That was as to when the defendant
17 alleges he learned that the money was counterfeit. You will
18 remember that his testimony, your Honor, was that when he was
19 put in the car.

20 THE COURT: It was in the car.

21 MR. CHASE: On the way down. I believe your
22 Honor misstated it as being later, when he was at headquarters,
23 right after he was arrested.

24 THE COURT: I will correct that.

25 MR. CHASE: Thank you. And I might add in all

2 fairness to the Government, we may have some dispute over
3 what portions should be read. There are portions that I
4 believe are relevant to the jury's request, or, as the Govern-
5 ment contends, I suppose, irrelevant to it.

6 MR. DISKANT: Your Honor, perhaps this could be
7 settled by rereading the note.

8 THE COURT: Give me the note. I will read the
9 note to you. It says:

10 "On the way to the Treasury Department office
11 when the defendant said he knew the money was counterfeit."

12 MR. DISKANT: Your Honor, it is our position
13 that that note calls for reading only the testimony of the
14 defendant with respect to what he said about knowing the
15 money was counterfeit. Mr. Chase has identified portions of
16 the transcript in which he explains the reasons why he said
17 that. We do not believe that that is what the jury asked for
18 and we don't believe it should be read to the jury, unless
19 they ask for that explanation as well.

20 MR. CHASE: Your Honor, I believe that those
21 portions of the testimony are intrinsically woven in with
22 what he said, and I believe the jury does care to hear what
23 the defendant had to say about those statements.

24 THE COURT: Let me hear the portions now that
25 you say are applicable.

(Testimony read.)

THE COURT: He didn't say that in the car.

MR. CHASE: That is correct, and I ask your Honor to tell the jury that he didn't say anything about it until the agent's interview, and we can't read this to them.

THE COURT: I understand, but I am not going to suggest to them. I am going to let them make their own judgments as to what went on. The testimony in the case is very clear that he didn't make any such statements on the way down to the Treasury Department.

MR. DISKANT: Your Honor, also that he did allegedly make such statements later on.

THE COURT: I am not going to volunteer anything. I ruled on this. I am not going to say anything more. I never suggest to the jury anything. I only give them what they ask for, and I don't put any thoughts in their mind. Bring the jury in. If they say after I talk to them that they want to hear the testimony about this, I then will direct the reporter to read what has been said downtown.

MR. CHASE: Thank you.

MR. DISKANT: Thank you. This also corrects the misstatement that I made. It is the same thing.

(The jury took its place in the jury box
at 10:20 a.m.)

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2 THE COURT: The last remaining request reads
3 as follows:

4 "May we see the transcript on the way to the
5 Treasury Department office when the defendant said he knew
6 the money was counterfeit." And it is signed by the fore-
7 person.

8 This gives me a chance to correct something I
9 said last night about the fact that some conversation was held
10 in the car. In the first place, let me indicate to you that
11 we do not have a written transcript, and, therefore, there is
12 nothing to show you. The reporter has taken down everything
13 that has been said and we can read it to you. But both law-
14 yers agree that nothing was said by the defendant from the
15 time of his arrest till the time he went down to the Treasury
16 Department. He didn't say anything about the money.

17 Does that answer that question?

18 THE FORELADY: Can you find out when it was
19 said?

20 THE COURT: When he got to the Treasury Depart-
21 ment he did make some statement. Is that what you want to
22 hear?

23 THE FORELADY: Yes.

24 THE COURT: Then the reporter will read it to
25 you.

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2 MR. CHASE: May we approach for a moment, your
3 Honor.

4 (At the side bar.)

5 MR. CHASE: Your Honor, yesterday you stated
6 that he had learned that the \$215 was counterfeit at the
7 Treasury Department. I would like you to indicate respect-
8 fully that, in fact, his testimony was that he learned about
9 that in the car ride when the agent showed him the money and
10 made certain statements.

11 THE COURT: I think that is the fact.

12 (In open court.)

13 THE COURT: Mr. Chase has indicated a certain
14 change of language that I considered, and since he said it,
15 he could probably say it better than I, because it is his
16 statement, and I will have the reporter read it to you and
17 adopt it.

18 (The reporter read as follows:

19 "Mr. Chase: Your Honor, yesterday you stated
20 that he had learned that the \$215 was counterfeit at
21 the Treasury Department. I would like you to indicate
22 respectfully that, in fact, his testimony was that he
23 learned about that in the car ride when the agent
24 showed him the money and made certain statements.")

25 THE COURT: Now the reporter will read that

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2 portion of the testimony which you have requested, and he will
3 indicate when it is direct examination and who is examining
4 and when it is cross-examination and who is examining.

5 (Testimony read.)

6 THE COURT: I will give this money to the Fore-
7 lady, this \$215.

8 You may retire and continue your deliberations.

9 (At 10:35 the jury retired to continue its
10 deliberations.)

CERTIFICATE OF SERVICE

February 22 , 1978

I certify that a copy of this notice of motion and affidavit has been mailed to the United States Attorney for the Southern District of New York.

Barry Bassis